TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

CORRECTED FISCAL NOTE

HB 2303 - SB 2427

March 9, 2014

SUMMARY OF BILL: Creates the *Health Care Provider Stability Act* (act). Prohibits a health insurer, third-party administrator, or other person from effect a material change to a contract under which a health care provider is paid for providing items or services during either the first year or initial term of the contract, whichever is longer. Such insurer, administrator, or other person is authorized to only make such a change to a contract if both the renewal date of such contract or the anniversary of the effective date of the contract, whichever is longer, and the third-party payer provides a calculation that estimates any reduction in the provider's cumulative allowed amount based on 12 months or shorter annualized period of time. A violation of this act is punishable by a civil penalty of no less than $100 or more than $1,000 for each violation. A health care provider may bring legal action to effectuate the provisions of this act. Defines "material change" as a change in fees or payment methodologies that a reasonable person would attach importance in determining the action to be taken upon the change. The act will take effect October 1, 2014.

ESTIMATED FISCAL IMPACT:

On February 23, 2014, a fiscal note was issued estimating a fiscal impact as follows:

Increase State Expenditures - $6,014,600/FY14-15
$8,011,100/FY15-16 and Subsequent Years

Increase Federal Expenditures - $10,979,700/FY14-15
$14,639,600/FY15-16 and Subsequent Years

Due to an erroneous assumption regarding the Department of Finance and Administration, Division of Benefits Administration, the fiscal note is being changed to correct this error. Based on information received from the Division of Benefits Administration, the assumptions are being updated but the fiscal impact remains unchanged.

Increase State Expenditures - $6,014,600/FY14-15
$8,011,100/FY15-16 and Subsequent Years

Increase Federal Expenditures - $10,979,700/FY14-15
$14,639,600/FY15-16 and Subsequent Years

Corrected Assumptions:

- According to the Department of Health, this will have no fiscal impact on the Department.
- According to the Department of Finance and Administration, Division Benefits Administration, this will affect contracts between third party payers, including third party administrators (TPAs) and providers. The Division does not contract with any providers directly.
- According to the Division, any effect on the Division will be the result of any costs passed through to the state-sponsored plans by its two carriers and costs associated with additional customer service at the Division.
- While there could be additional administrative costs placed on the TPAs that the Division contracts with, these costs will be as a result of changes the TPAs make to their business model and how they contract with providers. It is assumed that there are a number of variables that will impact a TPA's decision to implement any changes to its contract structure with providers. It is unknown how the provisions of the bill will affect the TPAs overall decision to make any changes with providers.
- It is assumed that any increase in administrative costs incurred by the Division of Benefits Administration can be accommodated within existing resources.
- According to the Department of Mental Health, TennCare MCO rates to the regional mental health institutes (RMHIs) have not changed over approximately the last five years; therefore, this will have no significant impact on compensation to RMHIs.
- According to the Bureau of TennCare, its ability to control healthcare inflation trends to levels significantly below that experienced by other Medicaid programs or in commercial health plans is heavily dependent on managed care organizations (MCOs) staying vigilant to detect utilization patterns and taking steps to expeditiously address such concerns.
- The inability of TennCare to react quickly will lead to an increase to TennCare's health inflation trends.
- According to TennCare, contracts between it and MCOs are amended on at least a semi-annual basis in recognition of the constantly changing healthcare environment.
- According to TennCare, denying its ability to react to changing trends except at a single point each year would represent a dramatic shift from the understanding each MCO had when they made the decision to enter into a full risk contract with TennCare and will result in a need to increase capitation payments as a result.
- According to TennCare, the definition of "material change" may prevent the MCO from reacting to new medical codes, taking steps to combat fraud and abuse, amending contracts in relation to the hospital rate variation resolution process, implementing primary care lock-in or changing prior authorization requirements, etc.
- According to TennCare, this will cause MCOs to be forced to re-contract every time a change is needed, preventing MCOs from addressing emerging utilization trends and implementing contracting strategies that lower such trend.
- According to TennCare, its rates assume a managed care cost savings of $22 million for FY13-14 and roughly $23 million in prior year managed care trend reductions in the base data.

- Canceling and renegotiating provider contracts several times a year will impede the MCOs from implementing strategies to achieve a reduction in unnecessary costs by an average of approximately $22,500,000 annually [($22 million + $23 million) / 2].
- Of $22,500,000, approximately $7,860,375 will be state funds at a rate of 34.935 percent and $14,639,625 will be federal funds at a 65.065 match rate.
- According to the Department of Commerce and Insurance, its Insurance Division estimates that it will experience a significant increase in the amount of provider complaints it must investigate.
- The Division will require two additional consumer insurance investigator I positions to address provider complaints.
- This will result in an increase in recurring state expenditures of $111, 928 [2 x (salary $40,728 + benefits $15,236).
- Additional recurring expenditures total $38,800 [2 x (administrative cost allocation $15,000 + computer network $600 + office lease $2,200 + supplies $600 + phone $1,000).
- Two additional positions will result in a non-recurring increase in FY14-15 state expenditures of $6,300 [2 x (computer $1,150 + office landscaping $2,000)].
- This bill will go into effect October 1, 2014; therefore, seventy-five percent of annual costs will be borne in FY14-15.
- The total increase in state expenditures is $6,014,627 {[($7,860,375 + $111,928 + $38,800) x 75 %] + $6,300} in FY14-15 and $8,011,103 in FY15-16 and subsequent years ($7,860,375 + $111,928 + $38,800).
- The total increase in federal expenditures is $10,979,719 ($14,639,625 x 75 %) in FY14-15 and $14,639,625 in FY15-16.
- Any civil penalties assessed are estimated to be minimal and will not result in a significant increase in revenue.

IMPACT TO COMMERCE:

Increase Business Revenue - $16,875,000/FY14-15
$22,500,000/FY15-16 and Subsequent Years

Other Impact to Commerce – Due to a number of unknown factors, the exact overall impact to commerce cannot be determined.

Assumptions:

- Those Healthcare providers serving TennCare recipients will experience an increase in revenue in FY14-15 and subsequent years. In FY14-15, there will be a recurring increase in business revenue for such healthcare providers of $16,875,000 ($22,500,000 x 75 percent) and $22,500,000 in FY15-16.
- Due to a number of unknown factors including the resulting variation in payment rates between health care providers and private insurance companies, the extent to which health insurance companies may shift the rate variations to consumers through

premiums, deductibles, and copayments, and the timeframe in which any of this might occur, the exact overall impact to commerce is indeterminable.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Lucian D. Geise, Executive Director

/jdb